

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2019-030-10047R

Parcel No. 06-13-102-008

Robert Berger,

Appellant,

vs.

Dickinson County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 6, 2020. Tyler Berger represented Robert Berger. Chief Deputy Assessor Jill Bergeson represented the Dickinson County Board of Review.

Robert and Sharyl Berger own a residential property located at 3000 Manhattan Boulevard, Wahpeton, Iowa. The subject's 2019 assessment was set at \$1,140,400, allocated as \$1,010,900 in land value and \$129,500 in dwelling value. (Ex. A).

Robert Berger petitioned the Board of Review asserting his assessment was not equitable compared with the assessments of other like property and that the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1 & 2). (Ex. C). The Board of Review denied the petition. (Ex. B).

Berger then appealed to PAAB reasserting his claim that the property is assessed for more than the value authorized by law. § 441.37(1)(a)(2).

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-71.126.2(2-4). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

The subject property is a one-story home built in 1974 with 60 feet of lake frontage (70.20 effective front feet) on West Okoboji Lake. The home has 1523 square feet of gross living area, a full basement with 968 square feet of low-quality finish, two open porches, a deck, a patio, and a two-car detached garage. It is listed as average-quality construction (4+00 grade) in normal condition. (Ex. A).

Berger purchased the property in March 2018 for \$940,000 directly from the seller without the assistance of a realtor. He testified the subject was not listed or exposed on the open market, but rather he solicited the purchase through circulating a letter offering to buy property from owners in the area. The sale was between unrelated parties. Berger further explained the sellers were allowed to remain in the property for the summer season after the purchase. Because the property was purchased between unrelated parties, Berger believes the sales price should be the assessed value.

Additionally, Berger offered an appraisal completed by Kerrie Woodley completed contemporaneous to the sale with an effective date of February 2018. Woodley opined a market value for the subject of \$1,000,000.

Woodley relied on three sales from May to September 2017 and two active listings of properties located on West Okoboji Lake. A summary of Woodley's comparable properties is shown in the following table. (Ex. 4).

Comparable	Lakefront (FF) (lineal feet)	Effective Lakefront (EFF) (lineal feet)	Year Built	Gross Living Area (SF)	2018 Sale Price ¹	Adjusted Sale Price
Subject	60	70.2	1974	1523	\$940,000	NA
1 –2524 Manhattan Blvd	30	64.5	1940	2022	\$825,000	\$960,500
2 –5707 Lake Shore Dr	50	63.5	1960	1440	\$940,000	\$995,500
3 –16390 Bayside Dr	60	69.1	1969	1583	\$1,080,000	\$1,026,500
4 – 2516 Manhattan Blvd	50	58.5	1952	1480	\$1,100,000	\$1,051,500
5 – 15131 215th Ave	50	52.0	1956	1356	\$995,000	\$972,200

Woodley adjusted the comparables for differences between them and the subject property. Comparables 1 and 2 lacked basements. We note Woodley reported the subject has 381 square feet of basement finish and adjusted the comparables on that basis. However, the subject's property record reports 968 square feet of basement finish.

Comparable 3 was the most similar in age, gross living area, site size, and lakefront but Woodley adjusted it downward \$50,000 because of updates to "the kitchen, baths, and/or flooring." (Ex. 4, p. 2).

Woodley's largest adjustments were for lake front footage. Woodley adjusted the comparables for differences in lakefront using a \$5000 per front foot adjustment. The adjustments were based on actual differences in lineal front footage on West Okoboji Lake. The table above includes the subject's and comparables' effective front foot (EFF) as reported on the Assessor's property record cards. (Exs. A, H-L). A property's effective front foot is determined by applying a depth factor to its frontage. 2008 IOWA REAL PROPERTY APPRAISAL MANUAL 2-6 to 2-23 (describing the front foot land valuation method), *available at*

https://paab.iowa.gov/sites/default/files/documents/2020/01/2landvaluationsection_0.pdf.

¹ Comparables 4 and 5 were active listings as of date of appraisal and the List Price was used for comparison. Woodley made a 5% downward adjustment to the list price of both comparables, but the record shows these adjustments were too small. Respectively the properties sold in 2018 for 8.6% and 9% less than the list price Woodley reported. (Ex. K & L).

We note the subject and comparables' frontage appears more similar on an EFF basis as opposed to a lineal front foot basis.

Woodley also completed the cost approach, concluding a value of \$1,001,877. In that approach, she opined a value of \$14,000 per actual front foot for the site, or \$840,000 total.

The Board of Review believes Woodley's front-foot adjustment in the sales comparison approach was below-market given her use of a \$14,000 per front foot value in the cost approach. (Ex. 4, p. 3). We agree. The Board of Review asserts that if Woodley had adjusted her sales at \$14,000 per front foot, the range of value for the closed sales would be between \$1,026,500 and \$1,230,500 and the current assessment would be supported. (Ex. O).

Additionally, the Board of Review believes Woodley's appraisal did not consider the depth of the lot or the total square footage of the sites. The Board of Review asserts adjusting sites on an EFF basis takes into consideration both the differences in lakefront frontage and site depth. We find there is validity to the Board of Review's critique in this case. Being careful not to make duplicative adjustments, an appraiser should consider a site's utility, including its depth and shape, in addition to its lake frontage when making adjustments. "[W]hen valuing a site on a Front Foot basis, the appraiser may also need to adjust for site depth." Appraisal Institute, James H. Boykin, *Land Valuation: Adjustment Procedures and Assignments* 75 (2001). "As a general rule, the front foot value of a site increases as its depth increases." *Id.* The IOWA REAL PROPERTY APPRAISAL MANUAL directs the appraiser to calculate a "depth factor" to adjust the sites for variations from the normal or typical site. MANUAL 2-6 to 2-23. The appraiser, utilizing a depth factor, adjusts the site to reflect differences in overall site size and depth. *Id.*

Aside from adjusting for lineal lake frontage, Woodley's appraisal does not adjust for site depth or size and there are some significant size differences between the subject and the comparables. For example, Comparables 2, 4, and 5 each received a \$50,000 lake front footage adjustment. No adjustments were made based on their site sizes, however, even though they ranged from 8375 to 22,150 square feet compared to the subject's site size of 15,900 square feet. (Exs. A, H-L).

We also note that Comparables 4 and 5, which were active listings when Woodley completed her analysis, have since sold with respective sale prices of \$1,012,500 and \$912,750. (Exs. K & L). Applying Woodley's adjustments to these sales but adjusting the site by \$14,000 per actual front foot as suggested by the Board of Review, would result in adjusted sale prices of \$1,109,000 and \$1,029,950. After considering the actual closed sale price of Comparables 4 and 5, as well as considering a \$14,000 adjustment to the sales actual lakefront, the average adjusted sale price of Woodley's comparables is roughly \$1,096,000.

Berger also identified two additional sales in close proximity to the subject in support of his claim: 2824 Manhattan Boulevard sold in December 2018 for \$1,015,000 and 2812 Manhattan Boulevard sold in April 2019 for \$1,000,000. (Exs. 2-3, D-G.) He believes these sales support his assertion the subject is over-valued. Berger did not make adjustments to these sales for differences between them and the subject. In his opinion they are both superior to his home with equal or greater lake frontage and each with a second unit cabin.

The Board of Review argues that 2824 Manhattan Boulevard was a contract sale. (Exs. D-E, V). Additionally, it noted 2812 Manhattan Boulevard was sold by the Internal Revenue Service, which obtained ownership of the property through foreclosure because of federal tax liens. 2812 Manhattan Boulevard then resold in October 2019 for \$1,400,000. (Exs. D-G, V).

In support of the assessment, the Board of Review submitted four 2018 sales and adjusted them for differences compared to the subject. The following table summarizes the sales. (Exs. P-U).

Comparable	Effective Front Foot	Year Built	Gross Living Area (SF)	2018 Sale Price	Adjusted Sale Price
Subject	70.20	1974	1523	\$940,000	NA
A – 2201 Lakeshore Dr	42.63	1956	1292	\$725,000	\$1,143,938
B – 1520 Lakeside Ave	43.70	1998	1523	\$800,000	\$1,120,606
C – 2212 Mills Park Cir	52.67	2006	1733	\$1,360,000	\$1,382,812
D – 2203 Lakeshore Dr	42.00	1998	1984	\$1,000,000	\$1,221,513

The Board of Review compared the properties based on their EFF rather than actual lake frontage. All of the sales have less EFF than the subject property and all but Comparable A are newer in age. Comparable C's improvements are over 30-years

newer compared to the subject property. We note the adjustments made by the Board of Review are based on differences in assessments and may not be market based adjustments. Specifically, Comparable C received a \$3,748 downward adjustment for physical depreciation in consideration of its 32-year age difference. Given the number of 2018 sales in the record that are closer in age to the subject we give this sale no consideration. Removing Comparable C from the Board of Review's analysis, the adjusted value range is roughly \$1,120,600 to \$1,221,500, with an average of \$1,162,000.

Analysis & Conclusions of Law

Berger contends the subject property is over assessed as provided under Iowa Code section 441.37(1)(a)(2).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(b). Market value essentially is defined as the value established in an arm's length sale of the property. *Id.* The sales comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990). "Sale prices of the property or comparable properties in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value." § 441.21(1)(b).

Under Iowa law, there is no presumption that the assessed value is correct. § 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted). To shift the burden, the taxpayer must "offer[] competent evidence that the market value of the property is different than the market value determined by the assessor." Iowa Code § 441.21(3). To

be competent evidence, it must “comply with the statutory scheme for property valuation for tax assessment purposes.” *Soifer*, 759 N.W.2d at 782.

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W.2d at 783. “Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.” *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)). Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted). “Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,’ and, with respect to the sale, its nature and timing. *Id.* (other citations omitted). Sale prices must be adjusted “to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments.” *Id.* (other citations omitted).

The subject recently sold and Berger offered the sale price as evidence of its correct market value. However, we note evidence in the record indicates the sale price may have been below market value. First, the subject was never exposed to the market prior to the sale. Second, the seller remained in the home for the summer season after closing, a sales concession that may have affected the sale price. Third, an appraisal in the record indicates a higher value opinion. For these reasons, we do not find the sale price alone conclusively establishes its market value as of January 1, 2019. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996).

Berger also provided two sales on Manhattan Boulevard that he believes support his claim. These sales were not adjusted for differences relative to the subject. Further, the conditions regarding their sales suggest they are either abnormal or not reflective of the market. § 441.21(1) (stating the requirement to adjust sales, including contract and forced sales, to eliminate factors which distort market value). We give them no weight.

Although we conclude the foregoing sale prices of the subject and the other Manhattan Boulevard properties are not reliable indicators of the subject property’s market value, Berger also submitted an appraisal prepared by Kerrie Woodley opining a value of \$1,000,000. The Woodley appraisal relied on three 2017 sales and two active

listings to support the opinion of value. The appraisal values the subject property following the statutory scheme and indicates the subject's market value is less than its current assessment. We find the burden of proof has been shifted to the Board of Review to uphold the assessment.

In support of the assessment, the Board of Review submitted four 2018 sales and adjusted them for differences compared to the subject. Of these, we find Comparables A, B, and D most similar to the subject and they show an adjusted value range between roughly \$1,120,600 and \$1,221,500, with an average of \$1,162,000. The adjusted sales prices support the subject property's assessment of \$1,140,400.

The Board of Review was also critical of Woodley's lakefront adjustments and asserted because these adjustments were below market it resulted in an undervaluation of the subject property. It asserts if \$14,000 per front foot adjustments would have been applied, the indicated range of value of the sales would have been \$1,026,500 to \$1,230,500.

We find the Woodley appraisal undervalues the subject by ignoring the depth and overall size of the site, as well as by applying a below-market front-foot adjustment. However, some of the sales in the appraisal are reasonably comparable to the subject property and may be indicative of its value with the appropriate adjustments.

Of Woodley's sales, we find Comparables 3, 4, and 5 to be the most pertinent to the January 2019 assessment date. Using their actual sales prices and Woodley's adjustments, but applying a \$14,000 adjustment per EFF, these sales show a range from \$1,040,500 to \$1,144,750; bracketing the subject's current assessed value. Further, the Board of Review adjusted these sales and asserts they support the subject's assessed value.

Viewing the record as a whole, we find the Board of Review upheld its burden to support the assessment.

Order

PAAB HEREBY AFFIRMS the Dickinson County Board of Review's action.


This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.


Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code sections 441.37B and Chapter 17A.19 (2019).



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

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